

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	Case No. 1:10CR387
)	
Plaintiff,)	Judge Sara Lioi
)	
v.)	
)	
JAMES C. DIMORA)	JURY INSTRUCTIONS
MICHAEL D. GABOR,)	
)	
Defendants.)	

INTRODUCTION

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case. I will start by explaining your duties and the general rules that apply in every criminal case. Then I will explain the elements of the crimes that each defendant is accused of committing. Then I will explain some rules that you must use in evaluating particular testimony and evidence. And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

JURORS' DUTIES

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved either defendant guilty beyond a reasonable doubt as to any or all of the Counts with which that defendant is charged. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial as well as these present instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers may talk about the law during their arguments. But if what they say is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one party or another influence your decision in any way.

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, AND REASONABLE DOUBT

As you know, each defendant has pleaded not guilty to the crimes charged in the Indictment. The Indictment is not any evidence at all of guilt. It is just the formal way that the government tells a defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

Instead, each defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that he is guilty.

This means that neither defendant has an obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that he is guilty, and this burden stays on the government from start to finish. You must find each defendant not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

The government must prove every element of the crimes charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved a defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

EVIDENCE DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allowed into evidence, and the stipulations that the lawyers agreed to.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial I did not let you hear the answers to some of the questions that the lawyers asked. Do not speculate about what a witness might have said. What the witness might have said is not evidence, and you are bound by your oath not to let such speculation influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

STIPULATIONS

A stipulation is an agreement among the parties that a certain fact is true or a certain exhibit is what it purports to be. You may give the stipulations as much or as little weight as you decide is appropriate in deciding the facts of the case.

The stipulations that the parties have agreed to in this case are as follows:

1. Cuyahoga County, Ohio ("Cuyahoga County" or "County") is a government body.
2. The County was created on or about January 16, 1810 by the Ohio General Assembly.
3. The Cuyahoga County Auditor's Office ("Auditor's Office"), Cuyahoga County Engineer's Office ("Engineer's Office"), and Cuyahoga County Sheriff's Office (Sheriff's Office"), were each headed by an elected public official.
4. James C. Dimora was employed by Cuyahoga County.
5. Michael Gabor was employed by the Cuyahoga County Auditor's Office.
6. Ohio Revised Code Section 148.06 limits the number of deferred compensation plans the County may offer.
7. James C. Dimora is married and is a resident of Independence, Ohio.
8. The County received benefits in excess of \$10,000 during the following one year periods under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance and other forms of Federal assistance:

May 31, 2006 through May 30, 2007
May 31, 2007 through May 30, 2008
July 31, 2004 through July 30, 2005
July 31, 2005 through July 30, 2006
July 31, 2006 through July 30, 2007
July 31, 2007 through July 30, 2008
May 24, 2007 through May 23, 2008
October 1, 2007 through September 30, 2008
9. At all times relevant, the operations of Cuyahoga County affected interstate commerce.
10. At all times relevant, the operations of the following affected interstate commerce: Ferris Kleem, Blaze Building, Blaze Construction, Phoenix Cement and FJR Properties.

11. At all times relevant, the Ohio General Assembly passed legislation establishing the annual salaries of county commissioners in Ohio.
12. James C. Dimora authorized his tax preparer to file, and his tax preparer did file, with the Internal Revenue Service, tax returns for the calendar years 2004 through 2007 inclusive, marked as Government Exhibits 3411 through 3414.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Now, some of you may have heard the terms "direct evidence" and "circumstantial evidence."

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, nor does it say that one is any better evidence than the other. You should consider all the evidence—both direct and circumstantial—and give it whatever weight you believe it deserves.

CREDIBILITY OF WITNESSES

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness

said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

Let me suggest some things for you to consider in evaluating each witness's testimony.

Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

Ask yourself if the witness had any relationship to the government or a defendant, or anything to gain or lose from the case that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.

If you decide that a witness deliberately lied about something significant in this case, you may consider not believing anything that witness says. Or, if you believe that the witness lied about some things but told the truth about others, you may simply accept those parts that you think are true and ignore the rest. In any case, it is up to the jury to decide whether to accept or reject all or part of a witness's testimony.

And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

NUMBER OF WITNESSES

One more point about the witnesses. Sometimes jurors wonder if the number of witnesses who testified makes any difference.

Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

A DEFENDANT'S RIGHT NOT TO TESTIFY

A defendant has an absolute right not to testify. The fact that either defendant did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations. Remember that it is up to the government to prove each defendant guilty beyond a reasonable doubt. It is not up to a defendant to prove that he is innocent.

LAWYERS' OBJECTIONS

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

SEPARATE CONSIDERATION Different Crimes

The defendants have been charged with different crimes. I will explain to you in more detail shortly which defendants have been charged with which crimes. Before I do that, I want to emphasize several things.

The number of charges is no evidence of guilt, and this should not influence your decision in any way. And in our system of justice, guilt or innocence is personal and individual. It is your duty to separately consider the evidence against each defendant on each charge, and to

return a separate verdict for each one of them. You must decide whether the government has presented proof beyond a reasonable doubt that a particular defendant is guilty of a particular charge.

Your decision as to any one defendant or charge, whether guilty or not guilty, should not influence your decision as to the other defendant or charges.

SEPARATE CONSIDERATION Multiple Defendants

It is your duty to give separate and personal consideration to the case of each defendant. When you do so, you should analyze what the evidence in the case shows with respect to that defendant, leaving out of consideration entirely any evidence admitted solely against the other defendant.

Each defendant is entitled to have his case determined from evidence as to his own acts, statements, and conduct and from any other evidence in the case which may be applicable to him.

Again, the fact that you return a verdict of guilty or not guilty as to one defendant should not, in any way, affect your verdict regarding the other defendant.

ON OR ABOUT

Next, I want to say a word about the dates mentioned in the Indictment.

The Indictment charges that the crimes occurred "on or about" specific dates. The government does not have to prove that the crimes happened on those exact dates. But the government must prove that the crimes happened reasonably close to those dates.

INTRODUCTION TO OFFENSES CHARGED

DEFINING THE OFFENSES—INTRODUCTION

That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the elements of the crimes that the defendants are accused of committing.

But before I do that, I want to emphasize that the defendants are only on trial for the particular crimes charged in the Indictment. Your job is limited to deciding whether the government has proved the crimes charged.

Also keep in mind that whether anyone else should be prosecuted and convicted for these crimes is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved these defendants guilty. Do not let the possible guilt of others influence your decision in any way.

CHARGES AS SET FORTH IN THE INDICTMENT

Defendant James C. Dimora is charged with the following:

- (1) four counts of Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Section 666(a)(1)(B);
- (2) two counts of Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Section 371;
- (3) nine counts of Hobbs Act Extortion, in violation of Title 18, United States Code, Section 1951;
- (4) eight counts of Conspiracy to Commit Hobbs Act Extortion, in violation of Title 18, United States Code, Section 1951;
- (5) one count of Conspiracy to Commit Wire Fraud or Honest Services Wire Fraud, in violation of Title 18, United States Code, Section 1349;
- (6) one count of Mail Fraud, in violation of Title 18, United States Code, Section 1341;
- (7) two counts of Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud, in violation of Title 18, United States Code, Section 1349;
- (8) one count of Conspiracy to Obstruct Justice, in violation of Title 18, United States Code, Section 371;
- (9) one count of Falsification of Records in a Federal Investigation, in violation of Title 18, United States Code, Section 1519;
- (10) one count of RICO Conspiracy, in violation of Title 18, United States Code, Section 1962(d); and

(11) four counts of Filing a False Tax Return, in violation of Title 26, United States Code, Section 7206(1).

James Dimora has pleaded not guilty to all of these charges.

Defendant Michael D. Gabor is charged with the following:

(1) one count of aiding and abetting Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Sections 666(a)(1)(B) and 2;

(2) one count of Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Section 371;

(3) one count of aiding and abetting Hobbs Act Extortion, in violation of Title 18, United States Code, Sections 1951 and 2;

(4) one count of Conspiracy to Commit Hobbs Act Extortion, in violation of Title 18, United States Code, Section 1951;

(5) one count of aiding and abetting Mail Fraud or Honest Services Mail Fraud, in violation of Title 18, United States Code, Sections 1341, 1346, and 2;

(6) one count of Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud, in violation of Title 18, United States Code, Section 1349.

(7) one count of Conspiracy to Obstruct Justice, in violation of Title 18, United States Code, Section 371; and

(8) one count of RICO Conspiracy, in violation of Title 18, United States Code, Section 1962(d).

Michael Gabor has pleaded not guilty to all of these charges.

CHART OF CHARGES SET FORTH IN THE INDICTMENT

For your ease of reference, the following chart lists which defendant is charged in each count. The final column of the chart lists the page numbers of the Indictment where the crime charged for each count can be found:

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
1	18 U.S.C. § 1962(d): RICO Conspiracy	Dimora Gabor		11–18
2	18 U.S.C. § 1349: Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud	Dimora	Alternatives Agency	18–27
3	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Alternatives Agency	27–28
4	18 U.S.C. § 371: Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds	Dimora	Kleem	28–48
5	18 U.S.C. §§ 666(a)(1)(B) and (2): Bribery Concerning Programs Receiving Federal Funds	Dimora	Kleem	48–49
6	18 U.S.C. §§ 666(a)(1)(B) and (2): Bribery Concerning Programs Receiving Federal Funds	Dimora	Kleem	49–50
7	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Kleem	50–51
8	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Stonebridge	51–55
9	18 U.S.C. § 1349: Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud	Dimora	Coppers	56–65
10	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Valentin	66–67

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
11	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Valentin	67–68
12	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Zavarella	68–70
13	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Zavarella	70–71
14	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Neiheiser	71–74
15	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Neiheiser	74–75
16	18 U.S.C. § 1349: Conspiracy to Commit Wire Fraud or Honest Services Wire Fraud	Dimora	Neiheiser	75–81
17	18 U.S.C. § 371: Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds	Dimora Gabor	Pumper, DAS & GreenSource	82–94
18	18 U.S.C. §§ 666(a)(1)(B) and (2): Bribery Concerning Programs Receiving Federal Funds	Dimora	Pumper & DAS	95
19	18 U.S.C. §§ 666(a)(1)(B) and (2) (and 18 U.S.C. § 2): Bribery Concerning Programs Receiving Federal Funds	Dimora Gabor (Aiding and Abetting)	Pumper & GreenSource	96
20	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Pumper & DAS	96–97
21	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora Gabor	Pumper & GreenSource	97–98
22	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Melaragno & Vandra Bros.	98–100
23	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Melaragno	100
24	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Rybak	101–108
25	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Rybak	108

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
26	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Randazzo	109–111
27	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Randazzo	111
28	18 U.S.C. § 371: Conspiracy to Obstruct Justice	Dimora Gabor		111–118
29	18 U.S.C. § 1519: Causing Falsification of Records in a Federal Investigation	Dimora		118–119
30	18 U.S.C. § 1341: Mail Fraud	Dimora	Executive Caterers (Landerhaven)	119–123
31	18 U.S.C. § 1349: Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud	Gabor	Gallucci	123–128
32	18 U.S.C. §§ 1341, 1346 and 2: Aiding and Abetting Mail Fraud or Honest Services Mail Fraud	Gabor	Gallucci	128–129
33	18 U.S.C. §§ 1951 and 2: Aiding and Abetting Hobbs Act Extortion	Gabor	Trovato	129–131
34–37	26 U.S.C. § 7206(1): Making and Subscribing a False Tax Return	Dimora		132

LAW AND ELEMENTS OF THE OFFENSES CHARGED

LAW OF CONSPIRACY

Each defendant has been charged with several counts of conspiracy to commit various offenses. In some instances, one or both defendants are also charged with actually committing the underlying offenses. In the law an underlying offense is called a “substantive offense.” Participating in a conspiracy to commit a substantive offense is an entirely separate and distinct charge from commission of the substantive offense itself. For example, Conspiracy to Obstruct Justice is an entirely separate and distinct offense from the substantive offense of Obstruction of Justice.

It is a crime for two or more people to conspire to commit a criminal act even if they never actually achieve their goal. Therefore, to find that there was a conspiracy to commit an offense, all the elements of the underlying substantive offense need not be satisfied. It is enough that the defendant in question entered into a conspiracy which, if successful, would satisfy all of the elements of the substantive offense.

Elements of Conspiracy

A conspiracy is a kind of criminal partnership. Unless otherwise instructed, to find a defendant guilty of a conspiracy charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the underlying substantive crime;

Second, that the defendant knowingly and voluntarily joined the conspiracy; and

Third, that a member of the conspiracy did one of the overt acts described in the

Indictment for the purpose of advancing or helping the conspiracy.

I will now discuss each of these elements in more detail.

First Element of Conspiracy—"Conspiracy" or "Agreement" Existed

With regard to the first element—a criminal agreement—the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the substantive crime charged in the specific Count.

This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit the substantive crime charged in the specific Count. This is essential.

An agreement can be proved indirectly by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in regard to the specific charge in question.

Second Element of Conspiracy—A Defendant's Connection to the Conspiracy

If you are convinced that there was a criminal agreement between two or more persons, then you must decide whether the government has proved that the defendant in question knowingly and voluntarily joined that agreement. You must consider each defendant separately.

To convict a defendant, the government must prove, as to the specific Count in question, that he knew the conspiracy's main purpose and that he voluntarily joined that conspiracy with the intent to help advance or achieve its goals.

This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

However, proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough. What the government must prove is that the defendant knew the conspiracy's main purpose and that he voluntarily joined the conspiracy intending to help advance or achieve its goals. This is essential.

A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

Third Element of Conspiracy—Overt Act

The third element that the government must prove is that a member of the conspiracy did one of the overt acts described in the Indictment for the purpose of advancing or helping the conspiracy.

The Indictment lists overt acts. The government does not have to prove that all these acts were committed, or that any of these acts were themselves illegal.

But the government must prove that at least one of these acts was committed by a member of the conspiracy, and that it was committed for the purpose of advancing or helping the conspiracy. This is essential.

LAW OF BRIBERY AND KICKBACKS

Many of the Counts charged against both defendant Dimora and defendant Gabor involve alleged bribery or kickbacks. I will now instruct you on some of the general principles of bribery and kickbacks law. You must apply these principles when you consider the following crimes:

- (1) Bribery Concerning Programs Receiving Federal Funds;
- (2) Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds;
- (3) Hobbs Act Extortion;
- (4) Conspiracy to Commit Hobbs Act Extortion
- (5) Conspiracy to Commit Honest Services Wire Fraud;
- (6) Honest Services Mail Fraud; and
- (7) Conspiracy to Commit Honest Services Mail Fraud.

Bribery and kickbacks involve the exchange of a thing or things of value for official action by a public official, in other words, a *quid pro quo* (a Latin phrase meaning "this for that" or "these for those"). Bribery and kickbacks also include offers and solicitations of things of value in exchange for official action. That is, for the payor, bribery and kickbacks include the offer or agreement to provide a thing of value to a public official in exchange for official action, whether or not the public official actually accepts the thing of value or agrees to perform the official action. For the public official, bribery and kickbacks include the public official's solicitation or agreement to accept a thing of value in exchange for official action, whether or not the payor actually provides the thing of value, and whether or not the public official ultimately performs the requested official action or intends to do so.

The public official and the payor need not state the *quid pro quo* in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods. Rather, the intent to

exchange may be established by circumstantial evidence, based upon the defendant's words, conduct, acts, and all the surrounding circumstances disclosed by the evidence, as well as the rational or logical inferences that may be drawn from these things.

Bribery and kickbacks require the intent to effect an exchange of money or other thing of value in return for official action, but each payment need not be correlated with a specific official act. The requirement that there be payment of a thing of value in return for the performance of an official act is satisfied so long as the evidence shows a "course of conduct" of things of value flowing to a public official in exchange for a pattern of official actions favorable to the donor. In other words, the intended exchange in bribery and kickbacks can be "this for these" or "these for these," not just "this for that." Further, it is not necessary for the government to prove that the defendant intended to perform a set number of official acts in return for the payments. Thus, all that must be shown is that payments were made with the intent of securing a specific type of official action in return. For example, payments may be made with the intent to retain the official's services on an "as needed" basis, so that whenever the opportunity presents itself the public official will take specific official actions on the giver's behalf. However, bribery or kickbacks are not proved if the benefit is intended to be, and is accepted as, simply an effort to buy favor or generalized goodwill from a public official who either has been, is, or may be at some unknown, unspecified later time, in a position to act favorably on the giver's interests.

It is not a defense to claim that a public official would have lawfully performed the official action in question even without having accepted a thing of value. In other words, it is not a defense that the offer or promise of anything of value was made to the public official in exchange for an official action that is actually lawful, desirable, or even beneficial to the

public. The law of bribery and kickbacks is not concerned with the wisdom or results of the public official's decisions, but rather with the manner in which the public official makes his decisions. However, you may consider the official action's lawfulness, desirability, or benefit to the public welfare, just as you would any other circumstances in the case, as it may bear upon the intent of a defendant in accepting the thing of value.

Also, it is not necessary for the government to prove that the scheme actually succeeded, or that any official act was actually taken by the public official in the course of the scheme. What the government must prove is the intent to effect an exchange of money or other thing of value in return for official action.

Also, because people rarely act for a single purpose, the giver need not have offered or provided the thing of value only in exchange for specific official actions, and the public official need not have solicited or accepted the thing of value only in exchange for the performance of official action. If you find beyond a reasonable doubt that a defendant gave, offered, or provided a thing of value in exchange for the performance of official action, then it makes no difference that the giver may also have had another lawful motive, such as friendship, for providing a thing of value. Likewise, if you find beyond a reasonable doubt that a defendant solicited or received, as a public official, a thing of value in exchange for the performance of official action, then it makes no difference that the public official may also have had another lawful motive for soliciting or receiving the thing of value. However, property given with the sole motive of cultivating friendship is not a bribe.

The term "official act" includes any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place

of trust or profit. Official acts include the decisions or actions generally expected of the public official. In addition, "official action" includes the exercise of both formal official influence (such as a public official's votes) and informal official influence (such as a public official's influence on other public officials). The term "official act" does not include actions taken in a personal or non-official capacity, such as actions taken as a political party leader.

"Anything of value" includes things possessing intrinsic value, whether tangible or intangible, that the person giving or offering or the person soliciting or receiving considers to be worth something. This includes a sum of money, shares of stock, percentage of revenue, commissions, favorable treatment, or a job or job offer. It also includes things of value given not to the public official but to a family member or third party for the benefit of the public official and at the official's knowing direction.

BRIBERY CONCERNING PROGRAMS RECEIVING FEDERAL FUNDS

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
5	18 U.S.C. §§ 666(a)(1)(B) and (2): Bribery Concerning Programs Receiving Federal Funds	Dimora	Kleem	48–49
6	18 U.S.C. §§ 666(a)(1)(B) and (2): Bribery Concerning Programs Receiving Federal Funds	Dimora	Kleem	49–50
18	18 U.S.C. §§ 666(a)(1)(B) and (2): Bribery Concerning Programs Receiving Federal Funds	Dimora	Pumper & DAS	95
19	18 U.S.C. §§ 666(a)(1)(B) and (2): Bribery Concerning Programs Receiving Federal Funds	Dimora	Pumper & GreenSource	96

Defendant Dimora is charged in **Counts 5, 6, 18, and 19** with committing the substantive offense of Bribery Concerning Programs Receiving Federal Funds. You must consider each of these Counts independently to determine whether the elements of Bribery Concerning Programs Receiving Federal Funds are met as to James Dimora and that Count.

With respect to Counts 5, 6, 18, and 19, the Indictment reads as follows:

[Read Counts 5, 6, 18, and 19]

Though it is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme in question, to find James Dimora guilty of Bribery Concerning Programs Receiving Federal Funds, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that at the time alleged in the particular Count of the Indictment you are considering, James Dimora was an agent of Cuyahoga County;

Second, that Cuyahoga County received federal benefits in excess of \$10,000 in a one-year period identified in the particular Count;

Third, that James Dimora solicited, demanded, accepted, or agreed to accept something of value from the person or entity(ies) identified in the specific Count;

Fourth, that James Dimora did so corruptly with the intent to be influenced or rewarded in connection with the business, a transaction, or series of transactions of Cuyahoga County identified in the specific Count; and

Fifth, that the value of the business, transaction, or series of transactions identified in the specific Count and to which the payment related was at least \$5,000.

With respect to the second element, the Court reminds you that the parties have stipulated that Cuyahoga County received federal benefits in excess of \$10,000 for the eight one-year periods identified in the stipulation section on page 5 at paragraph 8 of these instructions.

For purposes of these Bribery Concerning Programs Receiving Federal Funds instructions, to act “corruptly” means to act voluntarily, deliberately and dishonestly to either accomplish an unlawful end or result, or to use an unlawful method or means to accomplish an otherwise lawful end or result.

An “agent” is a person authorized to act on behalf of another person, organization or government. Employees, managers, and representatives are all agents of the government with which they are associated.

If you are convinced that the government has proved all of the elements against James Dimora as to any Bribery Concerning Programs Receiving Federal Funds Count, say so by returning a guilty verdict on that Count. If you have a reasonable doubt about any one of the elements, then you must find James Dimora not guilty of that Count.

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
19	18 U.S.C. §§ 666(a)(1)(B) and (2) (and 18 U.S.C. § 2): Bribery Concerning Programs Receiving Federal Funds	Gabor (Aiding and Abetting)	Pumper & GreenSource	96

Defendant Gabor is charged in **Count 19** with aiding and abetting Bribery Concerning Programs Receiving Federal Funds. Because defendant Gabor is charged with aiding and abetting, for you to find him guilty of Count 19, it is not necessary for you to find that he personally committed the crime of Bribery Concerning Programs Receiving Federal Funds. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is an aider and abettor.

For you to find Michael Gabor guilty of Bribery Concerning Programs Receiving Federal Funds as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First, that the crime of Bribery Concerning Programs Receiving Federal Funds was committed by James Dimora as described in Count 19;

Second, that Michael Gabor helped to commit the crime or encouraged someone else to commit the crime; and

Third, that Michael Gabor intended to help commit or encourage the crime.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that Michael Gabor did something to help or encourage the crime with the intent that the crime be committed.

If you are convinced that the government has proved all of the aiding and abetting Bribery Concerning Programs Receiving Federal Funds elements as to Michael Gabor and Count 19, say so by returning a guilty verdict as to Michael Gabor on that Count. If you have a reasonable doubt about any one of the elements, then you must find Michael Gabor not guilty of this charge.

**CONSPIRACY TO COMMIT BRIBERY CONCERNING PROGRAMS RECEIVING
FEDERAL FUNDS**

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
4	18 U.S.C. § 371: Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds	Dimora	Kleem	28–48
17	18 U.S.C. § 371: Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds	Dimora Gabor	Pumper, DAS & GreenSource	82–94

In addition to the substantive Counts of Bribery Concerning Programs Receiving Federal Funds just discussed, defendant Gabor is charged in **Count 17**—and defendant Dimora is charged in both **Counts 4 and 17**—with Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds. You must consider each of these Counts—and each defendant—independently to determine whether the elements of Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds are met as to that Count and that defendant.

With respect to Counts 4 and 17, the Indictment reads, in part, as follows:

[Read Counts 4 and 17]

In addition, the overt acts pertaining to Counts 4 and 17 are found on pages 31 through 48 and 86 through 94, respectively, of the Indictment.

Though it is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme in question, to find a defendant guilty of Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the substantive crime of Bribery Concerning Programs Receiving Federal Funds as alleged in the specific

Count;

Second, that the defendant charged in the specific Count knowingly and voluntarily joined the conspiracy; and

Third, that a member of the conspiracy did one of the overt acts listed in the applicable Count for the purpose of advancing or helping the conspiracy.

In deciding these Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds Counts, you must apply the explanation of the three elements of conspiracy found on pages 17–20 of these instructions.

To prove a defendant guilty of Conspiracy to Commit Bribery Concerning Programs Receiving Federal Funds, the government need not prove that the substantive offense of Bribery Concerning Programs Receiving Federal Funds alleged in the specific Count was actually committed. It is enough that the defendant in question entered into a conspiracy which, if successful, would satisfy all of the elements of the substantive offense.

The elements of the substantive offense of Bribery Concerning Programs Receiving Federal Funds are:

First, that at the time alleged in the particular Count of the Indictment, the applicable individual(s) identified in the specific Count was an agent of Cuyahoga County;

Second, that Cuyahoga County received federal benefits in excess of \$10,000 in a one-year period;

Third, that the alleged beneficiaries identified in the specific Count solicited, demanded, accepted, or agreed to accept something of value identified in the specific Count from the person

or entity(ies) identified in the Count;

Fourth, that in so doing, the alleged beneficiaries identified in the specific Count acted corruptly with the intent to be influenced or rewarded in connection with the business, a transaction, or series of transactions of Cuyahoga County identified in the specific Count; and

Fifth, that the value of the business, transaction, or series of transactions identified in the specific Count and to which the payment related was at least \$5,000.

With respect to the second element of Bribery Concerning Programs Receiving Federal Funds, the Court reminds you that the parties have stipulated that Cuyahoga County received federal benefits in excess of \$10,000 for the eight one-year periods identified in the stipulation section on page 5 at paragraph 8 of these instructions.

For purposes of these Bribery Concerning Programs Receiving Federal Funds instructions, to act “corruptly” means to act voluntarily, deliberately and dishonestly to either accomplish an unlawful end or result, or to use an unlawful method or means to accomplish an otherwise lawful end or result.

An “agent” is a person authorized to act on behalf of another person, organization or government. Employees, managers, and representatives are all agents of the government with which they are associated.

If you are convinced that the government has proved all of the elements of a Count against James Dimora or Michael Gabor, say so by returning a guilty verdict as to that defendant on that Count. If you have a reasonable doubt about any one of the elements as to either defendant, then you must find that defendant not guilty of that Count.

HOBBS ACT EXTORTION

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
7	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Kleem	50–51
8	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Stonebridge	51–55
11	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Valentin	67–68
13	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Zavarella	70–71
15	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Neiheiser	74–75
20	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Pumper & DAS	96–97
23	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Melaragno	100
25	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Rybak	108
27	18 U.S.C. § 1951: Hobbs Act Extortion	Dimora	Randazzo	111

Defendant Dimora is charged in **Counts 7, 8, 11, 13, 15, 20, 23, 25, and 27** with committing the substantive offense of Hobbs Act Extortion. You must consider each of these Counts independently to determine whether the elements of Hobbs Act Extortion are met as to that Count.

With respect to Counts 7, 8, 11, 13, 15, 20, 23, 25, and 27, the Indictment reads as follows:

[Read Counts 7, 8, 11, 13, 15, 20, 23, 25, and 27]

Though it is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme in question, to find James Dimora guilty of Hobbs

Act Extortion, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that James Dimora obtained or attempted to obtain from the alleged giver identified in the Count the property described in the Count;

Second, that James Dimora did this knowingly by extortion under color of official right;

Third, that the property was given with the giver's consent; and

Fourth, that in so acting, interstate or foreign commerce was obstructed, delayed, or affected, would have been affected, or had the potential to be affected in any way or degree.

If you are convinced that the government has proved all of the elements against James Dimora as to any Count, say so by returning a guilty verdict on that Count. If you have a reasonable doubt about any one of the elements, then you must find James Dimora not guilty of that Count.

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
33	18 U.S.C. §§ 1951 and 2: Aiding and Abetting Hobbs Act Extortion	Gabor	Trovato	129–131

Defendant Gabor is charged with aiding and abetting Hobbs Act Extortion in **Count 33**.

With respect to Count 33, the Indictment reads as follows:

[Read Count 33]

Because defendant Gabor is charged with aiding and abetting Hobbs Act Extortion, for you to find him guilty of Count 33, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged

someone else to commit the crime of Hobbs Act Extortion. A person who does this is an aider and abettor.

But for you to find Michael Gabor guilty of Hobbs Act Extortion as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First, that the crime of Hobbs Act Extortion was committed by Frank Russo as described in Count 33;

Second, that Michael Gabor helped to commit the crime or encouraged someone else to commit the crime; and

Third, that Michael Gabor intended to help commit or encourage the crime.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

Additionally, for purposes of the first element of aiding and abetting Hobbs Act Extortion, in order to find that the crime of Hobbs Act Extortion was committed, the government must prove each of the elements of Hobbs Act Extortion beyond a reasonable doubt:

First, that Frank Russo obtained or attempted to obtain cash from James Trovato, Jr.;

Second, that Frank Russo did this knowingly by extortion under color of official right;

Third, that the property was given with the consent of James Trovato, Jr.; and

Fourth, that in so acting, interstate or foreign commerce was obstructed, delayed, or affected, would have been affected, or had the potential to be affected in any way or degree.

If you are convinced that the government has proved all of the elements of aiding and abetting Hobbs Act Extortion as to Michael Gabor, say so by returning a guilty verdict on this Count. If you have a reasonable doubt about any one of these elements, then you cannot find the defendant guilty of aiding and abetting Hobbs Act Extortion.

Definitions

“Extortion under color of official right” occurs when a public official obtains or attempts to obtain money or property to which he is not entitled, intending that the money or property is being given to the public official in return for the taking, withholding or other influencing of official action. The payor must have a reasonable belief that the defendant has official power to do or withhold from doing that which is the reason for the extortion payment. It is not necessary for the government to prove that the public official made any specific threat or used force or fear to cause a person to part with the property that the Indictment alleges was obtained by that public official. The government must prove beyond a reasonable doubt, however, that the defendant knowingly used his official position in order to obtain money, property, or something of value, to which the defendant had no right.

The term “obstructs, delays, or affects interstate or foreign commerce” means an action which, in any manner or to any degree, interferes with, changes or alters the movement or transportation or flow of goods, merchandise, money or other property in commerce. It is not necessary for the government to prove that the defendant knew or intended that his actions would

affect commerce. It is only necessary that the natural consequences of the acts committed by the defendant as charged in the Indictment would affect commerce in any way or degree.

The term “property” as used in these instructions includes money and other tangible or intangible things of value.

CONSPIRACY TO COMMIT HOBBS ACT EXTORTION

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
3	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Alternatives Agency	27–28
10	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Valentin	66–67
12	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Zavarella	68–70
14	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Neiheiser	71–74
21	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora Gabor	Pumper & GreenSource	97–98
22	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Melaragno & Vandra Bros.	98–100
24	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Rybak	101–108
26	18 U.S.C. § 1951: Conspiracy to Commit Hobbs Act Extortion	Dimora	Randazzo	109–111

In addition to the substantive Counts of Hobbs Act Extortion just discussed, defendant Dimora is charged in **Counts 3, 10, 12, 14, 21, 22, 24, and 26** with Conspiracy to Commit Hobbs Act Extortion. Defendant Gabor is also charged in **Count 21**. You must consider each of these Counts—and each defendant—independently to determine whether the elements of Conspiracy to Commit Hobbs Act Extortion are met as to that Count and that defendant.

With respect to Counts 3, 10, 12, 14, 21, 22, 24, and 26, the Indictment reads, in part, as follows:

[Read Counts 3, 10, 12, 14, 21, 22, 24, and 26]

Though it is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme in question, to find a defendant guilty of

Conspiracy to Commit Hobbs Act Extortion, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the substantive crime of Hobbs Act Extortion as alleged in the specific Count; and

Second, that the defendant in question knowingly and voluntarily joined the conspiracy.

In deciding these Conspiracy to Commit Hobbs Act Extortion Counts, you must apply the explanation of the elements of conspiracy found on pages 17–20 of these instructions, except that the government does not need to prove that an overt act was committed for the purpose of advancing or helping the conspiracy.

To prove a defendant guilty of Conspiracy to Commit Hobbs Act Extortion, the government need not prove that the substantive offense of Hobbs Act Extortion alleged in the specific Count was actually committed. It is enough that the defendant in question entered into a conspiracy which, if successful, would satisfy all of the elements of the substantive offense.

The elements of the substantive offense of Hobbs Act Extortion are:

First, that the individual(s) alleged in the specific Count obtained from the alleged giver identified in the Count the property described in the Count;

Second, that that same individual did this knowingly by extortion under color of official right;

Third, that the property was given with the giver's consent; and

Fourth, that in so acting, interstate commerce was obstructed, delayed, or affected.

These terms were previously defined for you in the substantive Hobbs Act Extortion section of these instructions.

If you are convinced that the government has proved all of the elements of a Count against James Dimora or Michael Gabor, say so by returning a guilty verdict as to that defendant on that Count. If you have a reasonable doubt about any one of the elements as to either defendant, then you must find that defendant not guilty of that Count.

Campaign Contributions

I want to give you one final instruction with respect to the substantive Hobbs Act Extortion Count and the Conspiracy to Commit Hobbs Act Extortion Count related to Robert Rybak, Local 55, and the JATC.

Count 24 of the Indictment charges a Conspiracy to Commit Hobbs Act Extortion in which it is alleged that James Dimora conspired with others to obtain property in the form of “free or discounted home improvements, meals or entertainment, political donations, or organizing a political fundraiser” from Robert Rybak, Local 55, and the JATC. Count 25 of the Indictment charges the underlying substantive Hobbs Act Extortion violation. With respect to political contributions and organizing a political fundraiser, and only as to those allegations, I give you the following instruction.

The acceptance by an elected official of a political contribution does not, in itself, constitute a violation of the Hobbs Act even though the donor has business pending before the public official. However, if a public official demands or accepts money in exchange for a specific requested exercise of his official power, such a demand or acceptance does constitute a violation of the Hobbs Act regardless of whether the payment is in the form of a political

contribution. The understanding need not be verbally explicit and you may consider both direct and circumstantial evidence on this issue. This instruction does not apply to the allegation that James Dimora obtained free or discounted home improvements, meals, or entertainment from Robert Rybak, Local 55, and the JATC.

CONSPIRACY TO COMMIT WIRE FRAUD OR HONEST SERVICES WIRE FRAUD

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
16	18 U.S.C. § 1349: Conspiracy to Commit Wire Fraud or Honest Services Wire Fraud	Dimora	Neiheiser	75–81

Defendant Dimora is charged in **Count 16** with Conspiracy to Commit Wire Fraud or Honest Services Wire Fraud.

With respect to Count 16, the Indictment reads, in part, as follows:

[Read Count 16]

Though it is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme, to find James Dimora guilty of Count 16, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit Wire Fraud or Honest Services Wire Fraud in violation of federal law.

Second, that James Dimora knowingly and voluntarily joined the conspiracy.

In deciding this Conspiracy to Commit Wire Fraud or Honest Services Wire Fraud Count, you must apply the explanation of the elements of conspiracy found on pages 17–20 of these instructions, except that the government does not need to prove that an overt act was committed for the purpose of advancing or helping the conspiracy.

To prove James Dimora guilty of Conspiracy to Commit Wire Fraud or Honest Services Wire Fraud, the government need not prove that the substantive offense of Wire Fraud or Honest

Services Wire Fraud alleged in Count 16 was actually committed. It is enough that James Dimora entered into a conspiracy which, if successful, would satisfy all of the elements of the substantive offense.

The elements of the substantive offense of Wire Fraud are:

First, that an individual identified in Count 16 knowingly participated in, devised, or intended to devise a scheme to defraud Cuyahoga County or certain contractors in order to obtain money or property from Neiheiser or Reliance Mechanical;

Second, that the scheme included a material misrepresentation or concealment of a material fact;

Third, that the material misrepresentation or concealment was made with the intent to defraud; and

Fourth, that an individual identified in Count 16 used, or caused another to use, wire or radio communications in interstate commerce in furtherance of the scheme.

The elements of the substantive offense of Honest Services Wire Fraud are:

First, that an individual identified in Count 16 knowingly participated in, devised, or intended to devise a scheme to defraud Cuyahoga County and its citizens of their right to the honest services of a public official through bribery or kickbacks;

Second, that the scheme included a material misrepresentation or concealment of a material fact;

Third, that that same individual had the intent to defraud Cuyahoga County and its citizens; and

Fourth, that an individual identified in Count 16 used, or caused to be used, wire or radio communications in interstate commerce in furtherance of the scheme.

It is not necessary that the government prove that someone relied on the misrepresentation or false statement.

If you are convinced that the government has proved all of the elements of Conspiracy to Commit Wire Fraud or Honest Services Wire Fraud against James Dimora as to this Count, say so by returning a guilty verdict on this Count. If you have a reasonable doubt about any one of the elements, then you must find James Dimora not guilty of this Count.

Definitions—Both Wire Fraud and Honest Services Wire Fraud

The following definitions apply to both Wire Fraud and Honest Services Wire Fraud.

An act is “knowingly” done if done voluntarily and intentionally, and not because of mistake or some other innocent reason.

To “cause” wire or radio communications to be used is to do an act with knowledge that the use of the communications will follow in the ordinary course of business or where such use can reasonably be foreseen.

A misrepresentation or concealment is “material” if it has the natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension.

The term “false or fraudulent pretenses, representations, or promises” means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth. They

include actual, direct false statements as well as half-truths and the knowing concealment of material facts.

Definitions—Wire Fraud Only

The following definitions apply to Wire Fraud only.

A “scheme to defraud” includes any plan or course of action by which someone intends to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises.

To act with “intent to defraud” means to act with an intent to deceive or cheat for the purpose of either causing a financial loss to another or bringing about a financial gain to oneself.

Definition and Explanation—Honest Services Wire Fraud Only

The following applies to Honest Services Wire Fraud only.

A “scheme to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

When a public official devises or participates in a bribery or kickback scheme, that official violates the public's right to his honest services. This is because the official outwardly purports to be exercising independent judgment in official action, but instead has received benefits in return for the outcome or deed. The public is defrauded because the public is not receiving what it expects and is entitled to, namely, the public official's honest services. The offense of "honest services" fraud is not concerned with the wisdom or results of the public official's decisions, but rather with the manner in which the public official makes his decisions.

MAIL FRAUD

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
30	18 U.S.C. § 1341: Mail Fraud	Dimora	Executive Caterers (Landerhaven)	119-123

Defendant Dimora is charged in **Count 30** with Mail Fraud.

With respect to Count 30, the Indictment reads as follows:

[Read Count 30]

Though it is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme, to find James Dimora guilty of Count 30, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that James Dimora knowingly participated in, devised, or intended to devise a scheme to defraud in order to obtain money or property from the Dimora Boosters Committee or its contributors;

Second, that the scheme included a material misrepresentation or concealment of a material fact;

Third, that James Dimora had the intent to defraud; and

Fourth, that James Dimora used the mail or a private or commercial interstate carrier or caused another to use the mail or a private or commercial interstate carrier in furtherance of the scheme.

It is not necessary that the government prove that someone relied on the misrepresentation or false statement.

If you are convinced that the government has proved all of the elements against James Dimora as to this Count, say so by returning a guilty verdict on this Count. If you have a reasonable doubt about any one of the elements, then you must find James Dimora not guilty of this Count.

Definitions—Mail Fraud

A “scheme to defraud” includes any plan or course of action by which someone intends to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises.

The term “false or fraudulent pretenses, representations, or promises” means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth. They include actual, direct false statements as well as half-truths and the knowing concealment of material facts.

To act with “intent to defraud” means to act with an intent to deceive or cheat for the purpose of either causing a financial loss to another or bringing about a financial gain to oneself.

An act is “knowingly” done if done voluntarily and intentionally, and not because of mistake or some other innocent reason.

To “cause” the mail to be used is to do an act with knowledge that the use of the mail will follow in the ordinary course of business or where such use can reasonably be foreseen.

A misrepresentation or concealment is “material” if it has the natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension.

MAIL FRAUD OR HONEST SERVICES MAIL FRAUD

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
32	18 U.S.C. §§ 1341, 1346 and 2: Aiding and Abetting Mail Fraud or Honest Services Mail Fraud	Gabor	Gallucci	128–129

Defendant Gabor is charged in **Count 32** with aiding and abetting Mail Fraud or Honest Services Mail Fraud.

With respect to Count 32, the Indictment reads as follows:

[Read Count 32]

It is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme nor is it necessary for you to find that Michael Gabor personally committed the crime. Instead, you may find him guilty if he intentionally helped someone else to commit the crime. A person who does this is an aider and abettor.

But for you to find Michael Gabor guilty of Mail Fraud or Honest Services Mail Fraud as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First, that the crime of Mail Fraud or Honest Services Mail Fraud was committed by Frank Russo or Kevin Kelley as described in Count 32;

Second, that Michael Gabor helped to commit the crime; and

Third, that Michael Gabor intended to help commit the crime.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not

enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

Additionally, for purposes of the first element of aiding and abetting Mail Fraud or Honest Services Mail Fraud, in order to find that the crime of Mail Fraud or Honest Services Mail Fraud was committed, the government must prove each of the elements of either Mail Fraud or Honest Services Mail Fraud beyond a reasonable doubt.

The elements of Mail Fraud are:

First, that an individual identified in Count 32 knowingly participated in, devised, or intended to devise a scheme to defraud Cuyahoga County, the Cuyahoga County Auditor's Office, or OPERS in order to obtain money or property;

Second, that the scheme included a material misrepresentation or concealment of a material fact;

Third, that that same individual had the intent to defraud; and

Fourth, that an individual identified in Count 32 used the mail or a private or commercial interstate carrier or caused another to use the mail or a private or commercial interstate carrier in furtherance of the scheme.

The elements of Honest Services Mail Fraud are:

First, that an individual identified in Count 32 knowingly participated in, devised, or intended to devise a scheme to defraud Cuyahoga County and its citizens of their right to the

honest services of a public official through bribery or kickbacks.

Second, that the scheme included a material misrepresentation or concealment of a material fact;

Third, that that same individual had the intent to defraud Cuyahoga County and its citizens; and

Fourth, that an individual identified in Count 32 used the mail or a private or commercial interstate carrier or caused another to use the mail or a private or commercial interstate carrier in furtherance of the scheme.

It is not necessary that the government prove that someone relied on the misrepresentation or false statement.

If you are convinced that the government has proved all of the elements of aiding and abetting Mail Fraud or Honest Services Mail fraud against Michael Gabor as to this Count, say so by returning a guilty verdict on this Count. If you have a reasonable doubt about any one of the elements, then you must find Michael Gabor not guilty of this Count.

Definitions—Both Mail Fraud and Honest Services Mail Fraud

The following definitions apply to both Mail Fraud and Honest Services Mail Fraud.

An act is “knowingly” done if done voluntarily and intentionally, and not because of mistake or some other innocent reason.

To “cause” mail to be used is to do an act with knowledge that the use of the mail will follow in the ordinary course of business or where such use can reasonably be foreseeable.

A misrepresentation or concealment is “material” if it has the natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension.

The term “false or fraudulent pretenses, representations, or promises” means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth. They include actual, direct false statements as well as half-truths and the knowing concealment of material facts.

Definitions—Mail Fraud Only

The following definitions apply to Mail Fraud only.

A “scheme to defraud” includes any plan or course of action by which someone intends to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises.

To act with “intent to defraud” means to act with an intent to deceive or cheat for the purpose of either causing a financial loss to another or bringing about a financial gain to oneself.

Definition and Explanation—Honest Services Mail Fraud Only

The following applies only to Honest Services Mail Fraud.

A “scheme to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

When a public official devises or participates in a bribery or kickback scheme, that official violates the public's right to his honest services. This is because the official outwardly

purports to be exercising independent judgment in official action, but instead has received benefits in return for the outcome or deed. The public is defrauded because the public is not receiving what it expects and is entitled to, namely, the public official's honest services. The offense of "honest services" fraud is not concerned with the wisdom or results of the public official's decisions, but rather with the manner in which the public official makes his decisions.

CONSPIRACY TO COMMIT MAIL FRAUD OR HONEST SERVICES MAIL FRAUD

Count	Charge	Defendant Charged	Person/Entity Involved	Indictment Page(s)
2	18 U.S.C. § 1349: Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud	Dimora	Alternatives Agency	18–27
9	18 U.S.C. § 1349 Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud	Dimora	Coppers	56–65
31	18 U.S.C. § 1349: Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud	Gabor	Gallucci	123–128

Defendant Dimora is charged with Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud in **Counts 2 and 9**. Defendant Gabor is charged with Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud in **Count 31**. You must consider each of these Counts independently to determine whether the elements of Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud are met as to that Count.

With respect to Counts 2, 9, and 31, the Indictment reads, in part, as follows:

[Read Counts 2, 9, and 31]

Though it is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme, to find either James Dimora or Michael Gabor guilty as to any of these Counts, the government must prove, as to that Count, each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit Mail Fraud or Honest Services Mail Fraud in violation of federal law; and

Second, that the defendant identified in the specific Count knowingly and voluntarily joined the conspiracy.

In deciding these Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud Counts, you must apply the explanation of the elements of conspiracy found on pages 17–20 of these instructions, except that the government does not need to prove that an overt act was committed for the purpose of advancing or helping the conspiracy.

To prove a defendant guilty of Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud, the government need not prove that the substantive offense of Mail Fraud or Honest Services Fraud alleged in the specific Count was actually committed. It is enough that the defendant in question entered into a conspiracy which, if successful, would satisfy all of the elements of the substantive offense.

The elements of the substantive offense of Mail Fraud are:

First, that an individual identified in the specific Count knowingly participated in, devised, or intended to devise a scheme to defraud the entity(ies) identified in the Count in order to obtain the money or property identified in the Count;

Second, that the scheme included a material misrepresentation or concealment of a material fact;

Third, that that same individual had the intent to defraud; and

Fourth, that an individual identified in the specific Count used the mail or a private or commercial interstate carrier or caused another to use the mail or a private or commercial interstate carrier in furtherance of the scheme.

The elements of the substantive offense of Honest Services Mail Fraud are:

First, that an individual identified in the specific Count knowingly participated in,

devised, or intended to devise a scheme to defraud Cuyahoga County and its citizens of their right to the honest services of a public official through bribery;

Second, that the scheme included a material misrepresentation or concealment of a material fact;

Third, that that same individual had the intent to defraud Cuyahoga County and its citizens; and

Fourth, that an individual identified in the specific Count used the mail or a private or commercial interstate carrier or caused another to use the mail or a private or commercial interstate carrier in furtherance of the scheme.

It is not necessary that the government prove that someone relied on the misrepresentation or false statement.

If you are convinced that the government has proved all of the elements of a Count of Conspiracy to Commit Mail Fraud or Honest Services Mail Fraud against James Dimora or Michael Gabor, say so by returning a guilty verdict as to that defendant on that Count. If you have a reasonable doubt about any one of the elements as to either defendant, then you must find that defendant not guilty of that Count.

Definitions—Both Mail Fraud and Honest Services Mail Fraud

The following definitions apply to both Mail Fraud and Honest Services Mail Fraud.

An act is “knowingly” done if done voluntarily and intentionally, and not because of mistake or some other innocent reason.

To “cause” mail to be used is to do an act with knowledge that the use of the mail will follow in the ordinary course of business or where such use can reasonably be foreseeable.

A misrepresentation or concealment is “material” if it has the natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension.

The term “false or fraudulent pretenses, representations, or promises” means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth. They include actual, direct false statements as well as half-truths and the knowing concealment of material facts.

Definitions—Mail Fraud Only

The following definitions apply to Mail Fraud only.

A “scheme to defraud” includes any plan or course of action by which someone intends to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises.

To act with “intent to defraud” means to act with an intent to deceive or cheat for the purpose of either causing a financial loss to another or bringing about a financial gain to oneself.

Definition and Explanation—Honest Services Mail Fraud Only

The following applies to Honest Services Mail Fraud only.

A “scheme to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

When a public official devises or participates in a bribery or kickback scheme, that official violates the public's right to his honest services. This is because the official outwardly purports to be exercising independent judgment in official action, but instead has received benefits in return for the outcome or deed. The public is defrauded because the public is not receiving what it expects and is entitled to, namely, the public official's honest services. The offense of "honest services" fraud is not concerned with the wisdom or results of the public official's decisions, but rather with the manner in which the public official makes his decisions.

CONSPIRACY TO OBSTRUCT JUSTICE

Count	Charge	Defendant Charged	Indictment Page(s)
28	18 U.S.C. § 371: Conspiracy to Obstruct Justice	Dimora Gabor	111–118

Defendant Dimora and defendant Gabor are both charged in **Count 28** with Conspiracy to Obstruct Justice. You must consider each defendant independently to determine whether the elements of Conspiracy to Obstruct Justice are met as to that defendant.

With respect to Count 28, the Indictment reads, in part, as follows:

[Read Count 28]

In addition, the overt acts pertaining to Count 28 are found on pages 114 through 118 of the Indictment.

Though it is not necessary that the government prove all of the details alleged concerning the precise nature and purpose of the scheme, to find a defendant guilty of Conspiracy to Obstruct Justice, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the substantive crime of Obstruction of Justice as alleged in Count 28;

Second, that the defendant in question knowingly and voluntarily joined the conspiracy; and

Third, that a member of the conspiracy did one of the overt acts listed in Count 28 for the purpose of advancing or helping the conspiracy.

In deciding this Conspiracy to Obstruct Justice Count, you must apply the explanation of

the three elements of conspiracy found on pages 17–20 of these instructions.

To prove a defendant guilty of Conspiracy to Obstruct Justice, the government need not prove that the substantive offense of Obstruction of Justice alleged in Count 28 was actually committed. It is enough that the defendant in question entered into a conspiracy which, if successful, would satisfy all of the elements of the substantive offense.

The elements of the first type of the substantive offense of Obstruction of Justice, involving influencing testimony, are:

First, that a conspirator identified in Count 28 (paragraph 443) persuaded another person, or attempted to do so, or engaged in misleading conduct toward another person;

Second, that such conspirator did so knowingly and corruptly;

Third, that such conspirator acted with intent to influence the testimony of any person in an official proceeding;

Fourth, that such conspirator knew or should have known that the official proceeding was pending or was likely to be instituted; and

Fifth, that the official proceeding was a federal proceeding.

The elements of the second type of the substantive offense of Obstruction of Justice, involving altering an object or impairing an object's integrity, are:

First, that a conspirator identified in Count 28 (paragraph 443) persuaded another person or attempted to do so;

Second, that such conspirator did so knowingly and corruptly;

Third, that such conspirator acted with intent to alter, destroy, mutilate or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

Fourth, that such conspirator knew or should have known that the official proceeding was pending or was likely to be instituted; and

Fifth, that the official proceeding was a federal proceeding.

If you are convinced that the government has proved all of the elements against either defendant as to this Count, say so by returning a guilty verdict as to that defendant on this Count. If you have a reasonable doubt about any one of the elements as to either defendant, then you must find that defendant not guilty of this Count.

Definitions

The term "corruptly persuade" means to persuade with consciousness of wrongdoing.

The term "misleading conduct" means intentionally concealing a material fact or knowingly submitting or inviting reliance on a writing that is false with intent to mislead or knowingly using a trick or scheme with intent to mislead.

The term "official proceeding" includes a proceeding before a federal grand jury.

The term "object" includes a document.

With respect to both types of obstruction of justice offenses, the government does not have to prove that an official proceeding was actually pending or about to be instituted at the time of the offense. Rather, the government need only prove that the defendant knew or should have known that a proceeding was pending or was likely to be instituted. Furthermore, the government need not prove that the defendant knew the official proceeding was a federal proceeding.

FALSIFICATION OF RECORDS IN A FEDERAL INVESTIGATION

Count	Charge	Defendant Charged	Indictment Page(s)
29	18 U.S.C. § 1519: Falsification of Records in a Federal Investigation	Dimora	118–119

Defendant Dimora is charged in **Count 29** with Falsification of Records in a Federal Investigation.

With respect to Count 29, the Indictment reads as follows:

[Read Count 29]

To find James Dimora guilty of Count 29, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that James Dimora knowingly altered, concealed, covered up, falsified or made a false entry in—or willfully caused to be altered, caused to be concealed, caused to be covered up, caused to be falsified or caused a false entry in—any document;

Second, that James Dimora did so intending to impede, obstruct, or influence the investigation of any matter within the jurisdiction of any department or agency of the United States; and

Third, that James Dimora did so in contemplation of such investigation in which the document in question might have been material.

The government is not required to prove that an investigation of any matter within the jurisdiction of any department or agency of the United States was ongoing—or even imminent—at the time the document was falsified. But to be found guilty, the defendant must at least have foreseen such an investigation—and that the document might be material to such an investigation—at the time the document was falsified.

An act is “knowingly” done if done voluntarily and intentionally, and not because of mistake or some other innocent reason.

An act is done “willfully” if done voluntarily and intentionally, and with the intent to do something the law forbids; that is to say with a purpose either to disobey or disregard the law.

A document is “material” if it has a natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension.

If you are convinced that the government has proved all of the elements against James Dimora as to this Count, say so by returning a guilty verdict on this Count. If you have a reasonable doubt about any one of the elements, then you must find James Dimora not guilty of this Count.

RICO CONSPIRACY

Count	Charge	Defendant Charged	Indictment Page(s)
1	18 U.S.C. § 1962(d): RICO Conspiracy	Dimora Gabor	11–18

Count 1 of the Indictment charges defendants Dimora and Gabor with RICO Conspiracy. RICO Conspiracy occurs when an individual agrees or conspires with one or more other persons to conduct or to participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity, in violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act. You must consider each defendant independently to determine whether the elements of RICO Conspiracy are met as to that defendant.

With respect to **Count 1**, the Indictment reads as follows:

[Read Count 1]

To find either defendant guilty of RICO Conspiracy, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons agreed to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity;

Second, that the defendant in question knowingly and voluntarily joined the conspiracy or agreement with knowledge of its purpose; and

Third, that the defendant in question agreed that a conspirator, not necessarily the defendant, would commit at least two of the racketeering acts described in the Indictment.

In deciding this RICO Conspiracy Count, you must apply the explanation of the first and second elements of conspiracy found on pages 17–19 of these instructions. The third element

here is different, as you must find that the defendant in question agreed that a conspirator, not necessarily the defendant, would commit at least two of the racketeering acts described in the Indictment.

To prove a defendant guilty of RICO Conspiracy, the government need not prove that the substantive offense of RICO alleged in Count 1 was actually committed. It is enough that the defendant in question entered into a conspiracy which, if successful, would satisfy all of the elements of the substantive offense.

The elements of the substantive offense of RICO are:

First, that an enterprise existed that engaged in or affected interstate or foreign commerce;

Second, that an individual identified in Count 1 was associated with or employed by the enterprise;

Third, that that same individual knowingly conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs; and

Fourth, that the participation was through a pattern of racketeering activity.

Now I will give you more detailed instructions on some of these terms.

The Enterprise and its Effect on Interstate or Foreign Commerce

The first element of the underlying substantive offense is that an enterprise existed which engaged in or affected interstate or foreign commerce. As used in these instructions, the term "enterprise" includes any legal entity.

In the present case, the Indictment charges that Cuyahoga County, Ohio, is the enterprise. The parties have stipulated that Cuyahoga County is a government body. I instruct you that the enterprise in this case is Cuyahoga County, Ohio, and that the parties have also stipulated that, at all times relevant, the operations of Cuyahoga County affected interstate or foreign commerce.

Employed by or Associated with the Enterprise

The term “employed by or associated with the enterprise” means that the person must be connected to the enterprise in some meaningful way, and the person must know of the existence of the enterprise and of the general nature of its activities.

The parties have stipulated that James Dimora was employed by Cuyahoga County and that Michael Gabor was employed by the Cuyahoga County Auditor’s Office.

An individual need not have been employed by or associated with the enterprise for the entire time that the enterprise existed. But to satisfy this element of substantive RICO, the individual must, at some time during the period indicated in the Indictment, have been employed by or associated with the enterprise.

Conduct—or Participate in the Conduct of—the Affairs of the Enterprise

A person conducts, or participates in the conduct of, the affairs of an enterprise if that person uses his position in, or association with, the enterprise to perform acts which are involved in some way in the operation or management of the enterprise, directly or indirectly, or if the person causes another to perform such acts. An enterprise is “operated” not just by upper management but also by lower-rung participants in the enterprise who are under the direction of upper management or carry out upper management’s orders. An enterprise also might be

operated or managed by one who exerts control over the enterprise. Thus, it is not necessary that the individual have primary responsibility for the enterprise's affairs; the individual need only have some part in directing the enterprise's affairs.

Pattern of Racketeering Activity

A pattern of racketeering must include:

First, that at least two acts of racketeering were committed within ten years of each other.

Second, that the racketeering acts had the same or similar purposes, results, participants, victim or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated events. The racketeering acts need not be directly interrelated with each other. Instead, the racketeering acts must be connected to the affairs and operations of the criminal enterprise. This can be satisfied by proof that the racketeering acts were related to the activities of the enterprise.

Third, that the racketeering acts themselves constitute a threat of continued activity. This threat of continued activity may be established when the evidence shows that the racketeering acts are part of a long-term association that exists for criminal purposes or when the racketeering acts are shown to be a regular way of conducting a defendant's ongoing legitimate business or enterprise.

In determining whether the government has proved a threat of continued racketeering activity, you are not limited to consideration of the racketeering acts alone; you may consider the totality of the circumstances surrounding the commission of the racketeering acts to determine whether those acts posed a threat of continuing criminal activity.

Agreement to Commit a RICO Offense

You may find that a defendant has entered into the requisite agreement to commit a substantive RICO offense when the government has proved beyond a reasonable doubt that the defendant agreed with at least one other conspirator that at least two racketeering acts of the type or types of racketeering activity listed in the Indictment would be committed by a member of the conspiracy in the conduct of the affairs of the enterprise. The government is not required to prove that a defendant personally committed two racketeering acts, or that he agreed to personally commit two racketeering acts. Rather, the government need only prove beyond a reasonable doubt that a defendant agreed to participate in the enterprise with the knowledge and intent that at least one member of the RICO conspiracy (who could be, but need not be, a defendant himself) would commit at least two racketeering acts in conducting the affairs of the enterprise.

The alleged racketeering acts identified in the Indictment include Mail Fraud, Honest Services Mail Fraud, Hobbs Act Extortion and Obstruction of Justice. You have already been instructed on the elements of these offenses. The final type of racketeering offense alleged is Bribery under Ohio Revised Code § 2921.02. I will now instruct you on Bribery under Ohio statutory law. There are two ways to commit state law Bribery.

Bribery Under State Law

A bribe payor has violated the Ohio bribery statute if he: (1) promised, offered, or gave any valuable thing or valuable benefit; (2) and the valuable thing or valuable benefit was promised, offered, or given with the purpose of corrupting or improperly influencing a public servant with respect to the discharge of the public servant's duty.

A public servant has violated the Ohio bribery statute if he: (1) knowingly solicited or accepted for himself or another person any valuable thing or benefit; and (2) the valuable thing or benefit was solicited for the purpose of corrupting or improperly influencing the defendant or another public servant with respect to the discharge of his or the other public servant's duty.

A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

"To solicit" means to entice, urge, lure or ask.

"To corrupt" means to destroy or undermine the honesty or integrity of another; to taint; to infect.

A "public servant" includes any elected or appointed officer, employee or agent of the state or any political subdivision of the state.

Unanimity as to Type of Racketeering Activity

In order to convict a defendant of RICO Conspiracy, your verdict must be unanimous as to which type or types of predicate racketeering activity the defendant agreed would be committed. You must find two different racketeering acts from one or more of the following types of offenses:

- (1) Hobbs Act Extortion;
- (2) Obstruction of Justice;
- (3) Mail Fraud;
- (4) Honest Services Mail Fraud;
- (5) state law Bribery.

Essence of RICO Conspiracy Offense

As I have instructed you, because the essence of a RICO conspiracy offense is the agreement to commit a substantive RICO offense, the government need only prove that, if the conspiracy offense were completed as contemplated (1) the enterprise would exist; (2) such enterprise would engage in, or its activities would affect, interstate or foreign commerce; (3) a conspirator (who could be, but need not be, a defendant himself) would be employed by or associated with the enterprise; and (4) such conspirator would conduct or participate in the affairs of the enterprise through a pattern of racketeering activity.

The government is not required to prove that the alleged enterprise actually existed, that a defendant or another conspirator was actually employed by or associated with the enterprise, or that the enterprise was actually engaged in, or its activities actually affected, interstate or foreign commerce. Similarly, the government need not prove that the defendant in question personally

participated in the operation or management of the enterprise. Rather, you may find a defendant guilty of the RICO conspiracy offense if the evidence establishes beyond a reasonable doubt that the defendant knowingly agreed to facilitate or further a scheme which, if completed, would constitute a substantive RICO violation involving at least one other conspirator who would be employed by or associated with the enterprise and who would participate in the operation or management of the enterprise.

In short, to find a defendant guilty of the RICO conspiracy charged in Count 1 of the Indictment, you must find that the government proved beyond a reasonable doubt that (1) the defendant in question joined in an agreement or conspiracy with another person or persons, (2) knowing that the objective or purpose was to conduct or to participate, directly or indirectly, in the conduct of the affairs of an enterprise through a pattern of racketeering activity, and (3) intending to join with the other person or persons to achieve that objective.

MAKING AND SUBSCRIBING A FALSE TAX RETURN

Count	Charge	Defendant Charged	Indictment Page(s)
34–37	26 U.S.C. § 7206(1): Making and Subscribing a False Tax Return	Dimora	132

Defendant Dimora is charged in **Counts 34, 35, 36 and 37** with willfully Making and Subscribing a False Income Tax Return for the years 2004, 2005, 2006, and 2007, respectively.

With respect to Counts 34 through 37, the Indictment reads as follows:

[Read Counts 34–37]

In order to prove James Dimora guilty of the offense of making and subscribing a false income tax return, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that James Dimora made and signed a U.S. Individual Income Tax Return that contained false information as to a material matter as detailed in the Indictment, namely that his tax returns understated his income by failing to report income derived from alleged bribes or kickbacks;

Second, that James Dimora knew this information was false;

Third, that the return contained a written declaration that it was made under the penalties of perjury; and

Fourth, that in filing the false tax return, or causing it to be filed, James Dimora acted willfully, with the intent to file a return that was false.

For purposes of these Making and Subscribing a False Tax Return Counts, the parties have stipulated that James C. Dimora authorized his tax preparer to file, and his tax preparer did file, with the Internal Revenue Service, tax returns for the calendar years 2004 through 2007

inclusive, marked as Government Exhibits 3411 through 3414. The parties have further stipulated that James C. Dimora is married and is a resident of Independence, Ohio.

If you are convinced that the government has proved all of the elements against James Dimora as to any Count, say so by returning a guilty verdict on that Count. If you have a reasonable doubt about any one of the elements, then you must find James Dimora not guilty of that Count.

Element One: Make and Subscribe a Tax Return; Proof of Signing Return

The first element of Making and Subscribing a False Income Tax Return that the government must prove beyond a reasonable doubt is that defendant Dimora made and signed an income tax return that contained information that was false as to a material matter.

To “make and subscribe” a return means to sign a return and to file it (or cause it to be filed) with the Internal Revenue Service. A tax return is subscribed at the time it is signed. A tax return is filed at the time it is delivered to the Internal Revenue Service. A tax return is considered made and subscribed on the due date, even if filed early.

In general, the word “subscribe” simply means to sign one’s name to a document. In the case of an electronically filed return, an electronic signature made in accordance with guidance published by the Internal Revenue Service is for all purposes the same as a written signature on a paper return.

The fact that an individual caused his electronic signature to be filed with the return means that, unless and until outweighed by evidence in the case that leads you to a different conclusion, you may find that a filed tax return was in fact signed by the person whose name appears on the electronic signature.

In other words, you may infer and find that a tax return was in fact signed by the person whose name appears to be signed to it. You are not required, however, to accept any such inference or to make any such finding.

Return was False as to a Material Matter

Information on a tax return is “material” if the information is capable of influencing the correct computation of a tax liability or if it is capable of influencing or impeding the Internal Revenue Service in being able to verify or audit the tax return. Thus, any item on a return that is necessary for a correct computation of tax due and owing may be material.

An income tax return may be materially false not only because of a misstatement of a material matter, but also because of an omission of a material matter.

Counts 34, 35, 36 and 37 charge that defendant Dimora’s returns (for tax years 2004, 2005, 2006, and 2007, respectively) were materially false in that each return understated his total income, specifically by failing to report income the government alleges he received from bribes or fraud. If you find that defendant Dimora made a false statement on his tax return relating to the amount of income reported, then you may find that such is a material matter, as required under § 7206(1). This is for you to determine.

The government is not required to prove that a false statement on a return resulted in the reporting of an incorrect tax liability or that it actually influenced or impeded the Internal Revenue Service.

In addition, the government is not required to prove that a monetary amount on a return was false by any specific amount, or to prove the exact amount by which it was false, or to prove that it was false as to a “substantial amount.” It is not a defense that the amount of a false entry

involved a relatively small amount of money that would only be capable of influencing a tax computation by a relatively small amount.

Although the government is required to prove beyond a reasonable doubt that the defendant willfully filed a false income tax return, the government is not required to prove that any additional tax was due to the government or that the government was deprived of any tax revenues by reason of any filing of any false return. Whether or not the government has suffered pecuniary or monetary loss as a result of an alleged false return is not an element of the offense.

Definition—Receipt of Income; Funds or Property from Unlawful Sources

Income is taxable to its recipient from whatever source received. It includes income obtained both lawfully and unlawfully.

In determining the issue of the taxable income of the defendant, no distinction is made between income derived from lawful or unlawful sources. Funds or property received from unlawful or illegal sources, therefore, are treated in the same manner as funds or property from lawful or legal sources.

Income received from any source is taxable to its recipient when the recipient has such control over it that, as a practical matter, he derives readily realizable economic value from it. This occurs when cash or other funds or items are received by an individual in a manner which allows him freedom to dispose of them or use them at will.

Gift—Defined

It is for you, the jury, to decide whether certain funds or property are taxable or are nontaxable as gifts to the defendant. In determining whether a payment of money or property to

the defendant is a nontaxable gift, you should look to the intent of the person making the payment.

For tax purposes, a gift proceeds from a detached and disinterested generosity arising from affection, respect, admiration, charity, or like impulses. In this regard, the most critical consideration is the transferor's or donor's intention. What controls is the intention with which the payment was made.

Moreover, the characterization given to a certain payment by either the defendant or the person making the payment is not conclusive. Rather, you must make an objective inquiry as to whether a certain payment is a gift. You should look at the terms and substance of any request made by the defendant for the funds or property. In addition, you may take into account the following factors:

(1) A payment is not a gift if it is made to compensate the defendant for his services rendered or to be rendered. In this connection, you should consider how the defendant made his living;

(2) A payment is not a gift if the person making the payment did not act from any sense of generosity, but rather to secure goods, services, or some other such benefit for himself or for another;

(3) A payment is not a gift if the person making the payment felt he had a duty or obligation to make the payment; and

(4) A payment is not a gift if the person making the payment did so out of fear or intimidation.

This is not a complete listing of all the factors you should consider. You should take into account all the facts and circumstances of this case in determining whether any payment was a gift.

The decision as to whether individual payments are gifts or income is a question of fact for you to determine in light of practical human experience. If you find that a payment was a gift, as I have defined it, then that payment does not constitute income and need not be reported on an income tax return.

Element Two: Defendant Knew the Return was False

The second element of the offense that the government must prove beyond a reasonable doubt is that defendant Dimora knew the returns he filed were not true and correct as to every material matter.

A person acts knowingly when he acts intentionally and voluntarily. A person does not act knowingly when he acts because of ignorance, mistake, accident or carelessness. Whether the defendant acted knowingly may be proved by the defendant's conduct and by all of the facts and circumstances surrounding the case.

Element Three: Return was Filed Under Penalty of Perjury

The third element that the government must prove beyond a reasonable doubt is that each return contained a written statement that it was made under penalty of perjury.

To satisfy this element, the government must prove that on its face the return contained a statement indicating that the return was made under penalty of perjury.

Element Four: Defendant Acted Willfully

Finally, in order to prove that defendant Dimora filed false income tax returns, as charged, the government must prove beyond a reasonable doubt that he acted willfully.

To act “willfully”, as that term is used in these instructions, means to act voluntarily and deliberately, with the intent to violate a known legal duty. A defendant’s conduct is not “willful” if he acted through negligence, inadvertence, mistake, or due to a good faith misunderstanding of the requirements of the law.

Willfulness requires the government to prove that the law imposed a duty on the defendant (in this case, the duty under the tax laws to file a correct tax return), that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty. Evidence of willfulness is ordinarily circumstantial since direct proof is often unavailable.

In order to prove that defendant Dimora acted willfully, the government is not required to prove that he had the intention to defraud the government or to evade the payment of any taxes. An intent to evade income taxes is not an element of the offense.

CONCLUDING INSTRUCTIONS

INTRODUCTION REGARDING EVALUATION OF THE EVIDENCE

That concludes the part of my instructions explaining the elements of the crimes. Next I will explain some rules that you must use in considering some of the testimony and evidence.

INFERRING REQUIRED MENTAL STATE

I want to explain something about proving a defendant's state of mind. Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

WITNESS TESTIFYING TO BOTH FACTS AND OPINIONS

You have heard the testimony of IRS Special Agent Kelly Fatula, who testified to both facts and opinions. Each of these types of testimony should be given the proper weight.

As to the testimony on facts, consider the factors discussed earlier in these instructions for weighing the credibility of witnesses.

As to the testimony on opinions, you do not have to accept IRS Special Agent Fatula's opinion. In deciding how much weight to give it, you should consider the witness's qualifications and how she reached her conclusions along with the other factors discussed in these instructions for weighing the credibility of witnesses.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

TESTIMONY OF A WITNESS TO WHOM THE GOVERNMENT HAS MADE PROMISES

You have heard the testimony of Frank Russo, Kevin Kelley, John Valentin, Charles Randazzo, Joseph Gallucci, Steven Pumper, Ferris Kleem, Nick Zavarella, Harlan Diamond, Brian Shuman, and Daniel Gallagher, all of whom have pleaded guilty in this or in related cases. You have also heard that the government has promised them that they may receive certain sentencing recommendations from the government for their cooperation.

It is permissible for the government to make such a promise. But you should consider the testimony of these witnesses with more caution than the testimony of other witnesses. Consider whether their testimony may have been influenced by the government's promise.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe such witness's testimony beyond a reasonable doubt.

SECONDARY-EVIDENCE SUMMARIES ADMITTED IN EVIDENCE

During the trial you have seen counsel use summaries in the form of charts, drawings, and calculations that have been admitted in evidence. These summaries were admitted in

evidence, in addition to the material they summarize, because they may assist you in understanding the evidence that has been presented.

But the summaries themselves are not evidence of the material they summarize, and are only as valid and reliable as the underlying material they summarize.

OTHER ACTS OF A DEFENDANT

You have heard testimony from Kevin Kelley about a trip to New Orleans in which defendant Dimora participated. The trip was not one of the items charged in the Indictment. If you find that defendant Dimora participated in this particular trip, you can consider the evidence only as it relates to the government's claims on defendant Dimora's knowledge and intent. You must not consider it for any other purpose.

Remember that the defendants are on trial here only for the crimes charged in the Indictment, not for the other acts. Do not return a guilty verdict unless the government proves the crimes charged in the Indictment beyond a reasonable doubt.

CONCEALMENT OF EVIDENCE AND FALSE EXCULPATORY STATEMENTS

You have heard evidence regarding allegations that both defendants Dimora and Gabor made statements and engaged in conduct in an attempt to obstruct justice as described in Count 28 of the Indictment and that defendant Dimora caused the falsification of records in contemplation of a federal investigation as charged in Count 29 of the Indictment.

If you believe these allegations, then you may consider these alleged statements and conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that a particular defendant committed the crimes charged. This

alleged conduct may indicate that the defendant in question thought he was guilty and was trying to avoid punishment. On the other hand, sometimes an innocent person may engage in such alleged conduct for some other reason.

TRANSCRIPTIONS OF AUDIO RECORDINGS

You have heard recordings that were received in evidence, and you were provided written transcripts of the recordings.

Keep in mind that the transcripts are not evidence. They were given to you only as an aid to help you follow what was being said. The recordings themselves are the evidence. If you noticed any differences between what you heard on a recording and what you read in the transcript, you must rely on what you heard, not what you read. And if you could not hear or understand a certain part of a recording, you must ignore the transcript as far as that part is concerned.

JURY DELIBERATIONS

That concludes the part of my instructions explaining the rules for considering some of the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

The first thing that you should do in the jury room is choose someone to be your foreperson. This person will help to guide your discussions, and will speak for you here in court.

Once you start deliberating, do not talk to the courtroom deputy clerk, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, have your foreperson sign them, if possible, and then give

them to the courtroom deputy clerk. The clerk will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.

JUROR USE OF ELECTRONIC COMMUNICATION TECHNOLOGIES

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, iPod Touch, Blackberry or computer; the internet, any internet service or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

RESEARCH AND INVESTIGATION

Remember that you must make your decision based only on the evidence that you saw and heard here in court. Do not try to gather any information about the case on your own while you are deliberating.

For example, do not conduct any experiments inside or outside the jury room; do not bring any books, like a dictionary, or anything else with you to help you with your deliberations;

do not search the Internet; do not conduct any independent research, reading or investigation about the case; and do not visit any of the places that were mentioned during the trial.

Make your decision based only on the evidence that you saw and heard here in court.

JUROR NOTES

Remember that if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence. You should rely upon your own independent recollection of the evidence or lack of evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.

Whether you took notes or not, each of you must form and express your own opinion as to the facts of the case.

UNANIMOUS VERDICT

Your verdict, whether it is guilty or not guilty, must be unanimous.

With respect to each count, and each defendant, to find the defendant guilty, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves that defendant's guilt beyond a reasonable doubt.

Similarly, to find a defendant not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Either way, guilty or not guilty, your verdict must be unanimous.

DUTY TO DELIBERATE

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that—your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved a defendant guilty beyond a reasonable doubt.

PUNISHMENT

If you decide that the government has proved a defendant guilty, then it will be my job to decide what the appropriate punishment should be.

Deciding what the punishment should be is my job, not yours. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict.

Your job is to look at the evidence and decide if the government has proved the defendant

guilty beyond a reasonable doubt.

VERDICT FORMS

I have prepared verdict forms that you should use to record your verdict. The forms read as follows:

[Read Forms]

If you decide that the government has proved a charge against a defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the appropriate form. If you decide that the government has not proved the charge against a defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the appropriate form. Each of you should then sign the forms in ink, and your foreperson should date them and return them to me.

VERDICT LIMITED TO CHARGES AGAINST THESE DEFENDANTS

Remember that the defendants are only on trial for the particular crimes charged in the Indictment. Your job is limited to deciding whether the government has proved any one or more of these charges. Also remember that whether anyone else should be prosecuted and convicted for any of the charged crimes is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved a defendant guilty. Do not let the possible guilt of others influence your decision in any way.

COURT HAS NO OPINION

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if the government has proved either defendant guilty beyond a reasonable doubt.

Definition of Interstate or Foreign Commerce

In the context of the Hobbs Act Extortion and Conspiracy to Commit Hobbs Act Extortion Counts, which are discussed, respectively, beginning at pages 32 and 37 of the Jury Instructions, the Court provides the following definition:

Interstate commerce means trade, business, or travel between one state of the United States and another state, including the District of Columbia.

Foreign commerce means trade, business, or travel between any part of the United States and any other country.

In the context of the Conspiracy to Commit Wire Fraud and Honest Services Wire Fraud Count, which is discussed beginning at page 41 of the Jury Instructions, the Court provides the following definition:

The term “interstate or foreign commerce” includes wire, radio or television communications which crossed a state line.

In the context of the Conspiracy to Commit RICO Count, which is discussed beginning at page 63 of the Jury Instructions, please see the instruction entitled The Enterprise and its Effect on Interstate or Foreign Commerce at page 64 of your instructions.